

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEVADA

OLIN CORPORATION and  
PIONEER AMERICAS LLC D/B/A  
OLIN CHLOR ALKALI PRODUCTS,

Plaintiffs,

v.

CONTINENTAL CASUALTY  
COMPANY, FACTORY MUTUAL  
INSURANCE COMPANY, ZURICH  
AMERICAN INSURANCE  
COMPANY, ZURICH INSURANCE  
IRELAND LTD., NATIONAL  
UNION FIRE INSURANCE  
COMPANY OF PITTSBURGH,  
PENNSYLVANIA, and ACE  
AMERICAN INSURANCE  
COMPANY,

Defendants.

CASE NO.: 2:10-cv-00623-GMN-RJJ

**STIPULATED PROTECTIVE  
ORDER**

To facilitate discovery during the course of this proceeding,  
particularly the exchange of documents, things, information, testimony, and  
other evidence that the parties may consider confidential business information or  
that may be subject to a claim of privilege, the parties hereby stipulate, pursuant  
to Federal Rule of Civil Procedure 26 and Federal Rule of Evidence 502, that the  
following procedures shall be employed in this matter:

**CONFIDENTIAL INFORMATION**

1. **Definition of "Confidential Information."** "Confidential  
Information" as used herein means nonpublic confidential commercial  
information that is designated or marked "CONFIDENTIAL" by the supplying  
person, whether it be a document, deposition testimony, information contained  
in an interrogatory answer or otherwise, and contains one or more of the

1 following categories of information: (i) confidential and/or proprietary financial  
2 and/or business and/or commercial information; (ii) information that could  
3 cause an advantage to competitors by providing them information as to the  
4 commercial operations of the person or entity making the disclosure; and/or (iii)  
5 personal or employment-related information concerning the producing person or  
6 entity or any of their employees. The designation of documents as confidential  
7 shall include all copies, extracts and summaries prepared from such documents.

8           2.     **Definition of "Qualified Person."** "Qualified Person" as used  
9 herein means:

10           (a)     Outside and in-house attorneys for any party to this action  
11 and employees of such counsel to whom it is necessary that the Confidential  
12 Information be revealed for purposes of this action (including members and  
13 associates of such counsel, legal assistants, secretarial and clerical personnel);

14           (b)     This Court and all persons employed by this Court;

15           (c)     A named party and any of its current officers, directors or  
16 employees;

17           (d)     Experts or consultants retained by the parties, to the extent it  
18 is necessary to confer with such persons concerning the prosecution or defense  
19 of any claim in this action. Any such person shall execute an agreement in  
20 writing, in substantially the same form as the agreement attached hereto at  
21 Exhibit A, stating that he or she has read a copy of this Protective Order and  
22 agrees to be bound by its terms, which agreement shall be retained by counsel  
23 for the party retaining the expert;

24           (e)     Persons noticed for depositions or designated as trial  
25 witnesses and their counsel, to the extent deemed necessary by counsel for any  
26 of the parties in order to prepare or examine such witnesses;

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1 (f) Third parties employed by a party or its counsel in a litigation  
2 support capacity to review, organize, encode, copy, store or retrieve documents  
3 produced in this action;

4 (g) Court reporters and videographers retained to transcribe or  
5 record testimony in connection with this matter;

6 (h) Any other person as to whom the parties first agree in writing  
7 and who agrees in writing to be bound by the terms of this Protective Order;  
8 and

9 (i) Any other person who is designated as a Qualified Person by  
10 Order of this Court, after notice to all parties and to the person or entity who  
11 provided the Confidential Information.

12 3. **Disclosure and Use of Confidential Information.**

13 Confidential Information produced in this litigation shall be used solely for the  
14 purposes of this action, and shall not be disclosed or otherwise made available to  
15 persons other than Qualified Persons. However, a party may disclose  
16 Confidential Information beyond the terms of this Protective Order provided  
17 that it obtains prior consent for such disclosure from the party or entity  
18 designating the Confidential Information as "CONFIDENTIAL."  
19 Notwithstanding the foregoing, nothing in this Protective Order shall be  
20 construed to limit the ability of a party to disclose its own Confidential  
21 Information to any person, party or entity, or to use it in any way. Nor shall this  
22 Order be construed to prohibit any person, party or entity from using or  
23 disclosing documents or other information that was obtained independently of  
24 discovery or trial in this lawsuit.

25 4. **Designation of Confidential Documents.** Confidential  
26 documents shall include all documents and copies thereof which a person or  
27 entity producing or exchanging such documents has designated as confidential  
28 by marking each document "CONFIDENTIAL." In lieu of marking the originals

1 of documents, the person or entity may mark the copies that are produced or  
2 exchanged. All documents shall be designated as "CONFIDENTIAL" at the time  
3 of production.

4 5. Applicability to Third Parties. Third parties producing  
5 documents in the course of this action may also designate documents as  
6 "CONFIDENTIAL" subject to the same protections and constraints as the parties  
7 to the action. A copy of this Protective Order shall be served along with any  
8 subpoena served in connection with this action. Unless otherwise agreed, all  
9 documents produced by such third parties shall be treated as "CONFIDENTIAL"  
10 for a period of 15 days from the date of their production, and during that period  
11 any party may designate such documents as "CONFIDENTIAL" pursuant to the  
12 terms of this Protective Order.

13 6. Use of Confidential Information in a Deposition.

14 (a) All persons present at the taking of any deposition in which  
15 Confidential Information is disclosed shall be made aware of, and will be subject  
16 to, this Protective Order. If any person other than a Qualified Person as defined  
17 in Paragraph 2 of this Protective Order is present at the deposition, that person  
18 shall not be permitted to be present while Confidential Information is used  
19 during the deposition.

20 (b) Those portions of the deposition in which Confidential  
21 Information is discussed shall be designated as Confidential Information under  
22 the terms of this Protective Order. Confidentiality designations for depositions  
23 shall be made either on the record or by written notice to the other parties within  
24 15 days of receipt of the transcript. Unless otherwise agreed, depositions shall be  
25 treated as "CONFIDENTIAL" during the 15-day period following receipt of the  
26 transcript.

27 7. Inadvertent Production of Confidential Information. The  
28 inadvertent production of any Confidential Information that does not contain a

1 "CONFIDENTIAL" designation shall not be deemed to be a waiver, in whole or  
2 in part, of that person's or entity's claim that such material is Confidential  
3 Information entitled to protection pursuant to the terms of this Protective Order.  
4 Any party who inadvertently fails to designate such documents as  
5 "CONFIDENTIAL" shall, promptly upon discovery of its oversight, provide  
6 notice of the error to all parties receiving such information, and shall substitute  
7 appropriately-designated documents. Any party receiving such notice shall  
8 immediately return, expunge or destroy the improperly-designated documents  
9 and treat all information contained in or derived from such documents as  
10 "CONFIDENTIAL" pursuant to this Order. In the event that the receiving party  
11 had previously disclosed improperly-designated documents to any other person  
12 or entity, it shall undertake reasonable efforts to retrieve such documents and  
13 destroy them or return them to the producing party.

14 8. Filing of Documents Attaching or Incorporating  
15 Confidential Information.

16 (a) If documents or information covered by this Protective Order  
17 are filed with this Court, or attached to or incorporated in any document filed  
18 with this Court, such documents shall be filed under seal in accordance with the  
19 local rules of this Court and this Stipulated Protective Order.

20 (b) The title and caption of any document filed with this Court  
21 that attaches or incorporates documents or information covered by this  
22 Protective Order, shall include the following statement: "Filed Under Seal—  
23 Confidential Information in Olin & Pioneer v. Continental Casualty, et al."

24 (c) In the event a party uses any Confidential Information in any  
25 affidavits, briefs, memoranda of law, or other papers filed in Court in this action,  
26 such Confidential Information used therein shall be maintained under seal by the  
27 Court.

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1 (d) Prior to disclosure at trial or a hearing of materials or  
2 information designated "CONFIDENTIAL," the parties may seek further  
3 protections against public disclosure from the Court.

4 9. **Disputing Confidential Designation.** If any party disputes,  
5 in full or in part, the designation of certain information as "CONFIDENTIAL" it  
6 shall so inform the designating person or entity in writing, specifying the  
7 information at issue and the grounds for questioning the confidentiality  
8 designation. The parties shall thereafter confer as to the status of the subject  
9 information within ten (10) days of receipt of the objection. If the designating  
10 person or entity declines to withdraw the designation before or at the conference,  
11 the objecting party may raise the issue of the designation with the Court. Until  
12 the Court issues an order determining the validity of the designation, the  
13 documents shall be treated as "CONFIDENTIAL" pursuant to this Protective  
14 Order.

15 10. **Return of Documents and Termination of Protective Order.**  
16 Unless otherwise agreed by the person or entity producing such information,  
17 within sixty (60) days after final determination of this action, including any  
18 appeals, each party shall return all Confidential Information in its possession or  
19 control and all copies thereof to the person or entity who furnished it, and all  
20 documents and other material prepared by or on behalf of a party, its counsel or  
21 consultants thereto containing any Confidential Information of another person  
22 shall be at the same time destroyed to the extent it contains such Confidential  
23 Information. However, counsel for the parties shall be entitled to retain a set of  
24 all documents filed with the Court or marked as exhibits at any deposition,  
25 hearing or trial, and all correspondence generated in connection with the action.

26 11. **Removal of Documents from Court File.** Within sixty (60)  
27 days following the expiration of the last period for appeal from any order issued  
28 in connection with this action, the parties shall be allowed to remove any



1 materials designated by that party as "CONFIDENTIAL" from the office of the  
2 Clerk of Court.

3 12. **No Evidentiary Value.** The fact that a document may have  
4 been marked as "CONFIDENTIAL" shall not be given any evidentiary value.

5 **PRIVILEGED INFORMATION**

6 13. **Inadvertent Production of Privileged Material.** The  
7 inadvertent production of material that is subject to the attorney-client privilege,  
8 work-product doctrine or other privilege, protection or immunity from discovery  
9 shall not be deemed to be a waiver of the producing party's right to assert a claim  
10 of privilege, work product or other protection or immunity with respect to the  
11 produced materials and/or any materials related to the subject matter thereof.

12 14. **"Clawback" Agreement.** Any person or entity who  
13 inadvertently discloses documents that are privileged or otherwise immune from  
14 discovery shall, promptly upon discovery of such inadvertent disclosure, so  
15 advise the receiving party and request that the documents be returned. The  
16 receiving party shall return such inadvertently produced documents, including  
17 all copies, within 10 days of receiving such a request. The party returning such  
18 inadvertently produced documents may thereafter seek re-production of any  
19 such documents pursuant to applicable law. However, the fact that such  
20 inadvertently produced material may have been designated as  
21 "CONFIDENTIAL" shall not be asserted as a basis to compel production.

22 15. **"No-Subject Matter Waiver."** The production of a document  
23 or information during discovery, whether intentional or inadvertent, will not  
24 operate as a "subject-matter waiver" with respect to other undisclosed  
25 documents. This provision has no application where the allegedly privileged  
26 information or document is affirmatively used by a party producing the  
27 document in any deposition, proceeding, or motion or is otherwise affirmatively

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1 used in the litigation by the person or entity producing the information or  
2 document.

### 3 GENERAL PROVISIONS

4 16. ESI Discovery Plan. The parties have agreed to the  
5 parameters for the discovery of electronically stored information ("ESI") and  
6 production of hard-copy documents in this litigation, as set forth in their  
7 Stipulated ESI Discovery Plan, which is attached hereto at Exhibit B and is  
8 hereby incorporated into this Protective Order.

9 17. Modification; Additional Protection. Any party may apply  
10 to the Court for a modification of this Protective Order, and nothing in this  
11 Protective Order shall be construed to prevent a party from seeking further  
12 protections for Confidential Information, or other provisions enhancing or  
13 limiting confidentiality as may be appropriate. Moreover, the parties may  
14 mutually agree in writing, or by so stating on the record at any hearing or  
15 deposition, to disclose any document or testimony designated as  
16 "CONFIDENTIAL" to any person, party or entity that may not otherwise be  
17 entitled to see such information pursuant to this Protective Order.

18 18. No Waiver of Objections. No action taken in accordance  
19 with this Protective Order shall be construed as a waiver of any claim or defense  
20 in the action, or of any position as to discoverability, authenticity, materiality,  
21 relevance or admissibility of evidence, or any other objection which may be  
22 asserted during the course of this litigation.

23 19. Successor Parties. This Protective Order shall apply to all  
24 parties and counsel that presently are part of, or may become part of, this action  
25 (including any appeal), and their respective successors or assigns.

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20. Survival of Obligations. The obligations imposed by this Protective Order shall survive the termination of this action, and shall continue in effect until expressly released by the person or entity furnishing documents or information. The Court shall retain jurisdiction subsequent to settlement or entry of judgment to enforce the terms of this Order.

APPROVED AS TO FORM AND CONTENT

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National Union Fire Insurance Co. of  
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American Insurance Co.

10 ORDER

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12 IT IS SO ORDERED.

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14 UNITED STATES ~~DISTRICT~~ [MAGISTRATE] JUDGE

15 DATED: October 20, 2010  
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EXHIBIT A

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEVADA

OLIN CORPORATION and  
PIONEER AMERICAS LLC D/B/A  
OLIN CHLOR ALKALI PRODUCTS,

Plaintiffs,

v.

CONTINENTAL CASUALTY  
COMPANY, FACTORY MUTUAL  
INSURANCE COMPANY, ZURICH  
AMERICAN INSURANCE  
COMPANY, ZURICH INSURANCE  
IRELAND LTD., NATIONAL  
UNION FIRE INSURANCE  
COMPANY OF PITTSBURGH,  
PENNSYLVANIA, and ACE  
AMERICAN INSURANCE  
COMPANY,

Defendants.

CASE NO.: 2:10-cv-00623-GMN-RJJ

**CONFIDENTIALITY AGREEMENT**

I, \_\_\_\_\_, state:

1. I reside at \_\_\_\_\_;

2. My present employer is

\_\_\_\_\_;

3. My present occupation or job title is

\_\_\_\_\_;

4. I have read and understand the attached Stipulated Protective Order ("Order") entered in the above case, and I attest to my understanding that access to information designated as "CONFIDENTIAL" may be provided to me and that such access shall be pursuant to the terms, conditions and restrictions of the Order. I agree to be bound by the terms of the Order, both with respect to this Court's powers of supervision of the litigation in the above-captioned case and to the party that produced the protected documents and information.

1           5.     I shall not use or disclose to others, except in accordance with the  
2 Order, any "CONFIDENTIAL" documents or information. If I fail to abide by  
3 the terms of this Confidentiality Agreement or the Order, I understand that I  
4 shall be subject to sanctions by way of contempt of court and to separate legal  
5 and equitable recourse by the adversely affected party. I further consent to the  
6 jurisdiction and authority of the United States District Court for the District of  
7 Nevada in the event of any violation of this agreement or dispute related to this  
8 agreement.

9           6.     I state under penalty of perjury under the laws of the United States  
10 of America that the foregoing is true and correct.

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12           Executed on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.  
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# EXHIBIT B

EXHIBIT B



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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEVADA

OLIN CORPORATION and  
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OLIN CHLOR ALKALI PRODUCTS,

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CONTINENTAL CASUALTY  
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IRELAND LTD., NATIONAL  
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COMPANY OF PITTSBURGH,  
PENNSYLVANIA, and ACE  
AMERICAN INSURANCE  
COMPANY,

Defendants.

CASE NO.: 2:10-cv-00623-GMN-RJJ

STIPULATED ESI DISCOVERY  
PLAN

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Plaintiffs Olin Corporation and Pioneer Americas, LLC (collectively "Plaintiffs"); and Defendants Factory Mutual Insurance Co., Zurich American Insurance Co., National Union Fire Insurance Co. of Pittsburgh, Pennsylvania, and Ace American Insurance Co. (collectively "Property Insurers") and Defendant Continental Casualty Co. ("Continental" and, together with the Property Insurers, "Defendants"), each agree to the following parameters regarding the discovery of electronically stored information ("ESI") and hard copy production format in the above-captioned case. To the extent this Plan does not address certain issues, such issues remain open for resolution in a separate plan or plans, either negotiated by the parties or ordered by the Court.

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**ESI DISCOVERY PLAN**

A party on whom a Request for Production under Federal Rule of Civil Procedure 34 is served shall search for and produce responsive ESI in accordance with the following custodial search protocol. (As used herein, th

1 term "Responding Party" means the party responding to the Request for  
2 Production and the term "Requesting Party" means the party that made and  
3 served the Request for Production.)

4 **I. Identification of Responsive Electronic Documents.**

5 **A. Custodians.**

6 1. The parties agree to collaborate in good faith to identify the  
7 relevant custodians whose ESI will be searched in response to a Request for  
8 Production. The parties agree that the Plaintiffs shall be required to produce ESI  
9 in this matter from no more than 15 custodians, that the Property Insurers shall  
10 be required to produce ESI in this matter from no more than 15 custodians, and  
11 that Continental shall be required to produce ESI in this matter from no more  
12 than 15 custodians.

13 2. Within ten (10) days after service of a Request for  
14 Production, the Responding Party will provide all opposing counsel in writing a  
15 list of proposed custodians whose ESI will be searched.

16 3. Within five (5) days of receipt of such a proposed custodian  
17 list, the opposing parties shall provide all counsel, in writing, either (i) notice that  
18 the proposed custodian list is acceptable, or (ii) a proposed list of alternative  
19 and/or additional custodians whose ESI should be searched.

20 4. Within five (5) days of receipt of a Requesting Party's  
21 proposed list of alternative and/or additional custodians, the parties shall meet  
22 and confer in good faith to reach agreement on the custodians whose ESI will be  
23 searched. To the extent the parties are unable to reach agreement on all  
24 custodians, the Responding Party shall search and produce ESI from all agreed-  
25 upon custodians, without delay, and the parties shall reserve their rights to seek  
26 appropriate relief from the court with respect to any disputed custodians.

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1           B.     Search Term and Time Period Selection and Objections.

2           1.     The parties agree to collaborate in good faith to identify the  
3 relevant search terms and date restrictions to use for purposes of searching the  
4 ESI for identified custodians.

5           2.     Within ten (10) days after service of a Request for  
6 Production, the Responding Party will provide all opposing counsel in writing  
7 with a list of proposed search terms and date restrictions for use in searching for  
8 responsive ESI.

9           3.     Within five (5) days of receipt of such a proposed custodian  
10 list, the Requesting Party shall provide all opposing counsel, in writing, either (i)  
11 notice that the proposed search terms and date restrictions are acceptable, or (ii) a  
12 proposed list of alternative and/or additional search terms or date restrictions to  
13 use in searching for responsive ESI.

14           4.     Within five (5) days of receipt of a Requesting Party's  
15 proposed list of alternative and/or additional search terms or date restrictions,  
16 the parties shall meet and confer in good faith to reach agreement on the relevant  
17 search terms or date restrictions. To the extent the parties are unable to reach  
18 agreement on all search terms or date restrictions, the Responding Party shall  
19 search and produce ESI from all agreed-upon custodians, using the agreed-upon  
20 search terms and date restrictions, without delay, and the parties shall reserve  
21 their rights to seek appropriate relief from the court with respect to any disputed  
22 search terms or date restrictions.

23           5.     Attachments Included. Queries will be run against all ESI  
24 collected from agreed-upon custodians, including emails and their attachments.  
25 If a query returns an email or an attachment to an email, both the email and any  
26 attachment(s) will be reviewed and produced, if responsive and non-privileged,  
27 and subject to the parties' objections to discovery requests and any agreements  
28 reached in the parties' meet-and-confer process.

1           C.     Sources of ESI.

2           1.     Sources to be Searched. For each custodian who is identified  
3 as provided herein, the parties will search for ESI that resides in the following  
4 repositories associated with that custodian:

5           a.     active email servers, email archives wherever located,  
6 group share folders and document management systems as described below,  
7 work (both laptop and desktop) hard drives, and assigned network folders.

8           2.     Group Share Folders and Document Management Systems.  
9 Each party shall make a reasonable effort to identify documents in group share  
10 folders and document management systems associated with the identified  
11 custodians and shall include the same in the custodial ESI search.

12           3.     Back-up Tapes.

13           a.     No Search Required. No party is required to search  
14 back-up tapes for responsive documents in the first instance. Each party reserves  
15 its right to request a search of back-up tapes later. Each party further reserves its  
16 right to seek cost shifting or cost sharing in the event that it is compelled to  
17 search back-up tapes.

18           b.     Back-up Tape Recycling. Parties can apply back-up tape  
19 rotation recycling programs as follows:

20           i.     Plaintiffs can continue and/or restart a 90-day  
21 back-up tape recycling rotation at all of its locations.

22           ii.    Plaintiffs provided the Defendants a list of back  
23 up tapes for the Henderson plant that are currently being preserved, attached as  
24 Exhibit A. The parties will preserve these back-up tapes until December 1, 2010.  
25 If no party objects to the destruction of these back-up tapes at that time, the back-  
26 up tapes will be recycled.

1                   4.     **No Other Sources.**

2                   A party's obligation to conduct a reasonable search for  
3 documents responsive to a discovery request is limited to a search of the sources  
4 of ESI specifically identified in this section as described above. The parties shall  
5 have no obligation to search for or produce any ESI from any source of ESI,  
6 except the sources specifically identified in this section.

7                   **D.     Responsiveness Presumption.**

8                   1.     With respect to ESI, (i) a party's obligation to conduct a  
9 reasonable search for ESI in response to propounded discovery requests shall be  
10 deemed to be satisfied by searching the specifically identified ESI sources of the  
11 agreed-upon custodian using the agreed-upon search terms, pursuant to the  
12 protocol set forth herein; and (ii) a party shall have no obligation to produce any  
13 ESI, except documents captured by one or more of the agreed-upon search terms  
14 and that are non-privileged and responsive to a specific propounded discovery  
15 request.

16                  2.     The fact that a document is captured by application of search  
17 terms to the records of identified custodians pursuant to this protocol does not  
18 mean that such document is responsive to any propounded discovery request or  
19 otherwise relevant to this litigation. Propounded discovery requests shall govern  
20 the scope of documents to be produced, subject to the parties' objections and any  
21 agreements reached in the parties' meet-and-confer process.

22                  **E.     Reservation of Rights.**

23                  1.     Notwithstanding this protocol, the parties reserve all rights  
24 to object to a Request for Production for any reason permitted under the Federal  
25 Rules of Civil Procedure. Further, the fact that any ESI or other document is  
26 produced pursuant to the protocols set forth herein shall not be construed as an  
27 acknowledgement that such ESI or other document is relevant to the subject  
28 matter of this action. The parties expressly reserve any and all objections to the

1 relevance, materiality and admissibility of the ESI and other documents  
2 produced pursuant to this Stipulated ESI Discovery Plan.

3 **II. Privilege Protocol.**

4 **A. In-House Counsel.**

5 1. Each party will disclose the names and full business titles of  
6 all in-house counsel.

7 2. All emails or other documents to, from, or ccing in-house  
8 counsel can be excluded from the production, as potentially privileged.

9 3. The parties can search all ESI for the names of counsel and  
10 exclude it from production as potentially privileged.

11 4. A log of the documents resulting from this search for  
12 potentially privileged documents will be generated from the metadata fields to  
13 the extent they exist as electronic metadata associated with the original electronic  
14 documents ("Expedited Privilege Log"), and shall promptly be produced to the  
15 Requesting Party.

16 5. Documents identified on the Expedited Privilege Log need  
17 not be reviewed before being logged and withheld from production, or at any  
18 time thereafter, unless the Requesting Party requests further review as described  
19 below.

20 **B. Outside Counsel.**

21 1. Without disclosing the name of outside counsel, each party  
22 may search the text of electronic documents and any associated metadata fields  
23 for names of outside counsel who were retained by the party.

24 2. The documents resulting from the above-described search  
25 shall be logged in an Expedited Privilege Log in the same manner described in  
26 Section III.A above and such logs shall be promptly produced to the Requesting  
27 Party.

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1                   3. Documents identified on the Expedited Privilege Log need  
2 not be reviewed before being logged and withheld from production, or at any  
3 time thereafter, unless the Requesting Party requests further review as described  
4 below.

5           **C. Requesting Review.**

6                   1. The Requesting Party shall review the Expedited Privilege  
7 Log upon receipt. If the Requesting Party in good faith has reason to believe  
8 particular entries on the Expedited Privilege Log may not reflect privileged  
9 documents, it can request that the Responding Party review those particular  
10 documents.

11                   2. If the Responding Party determines upon review that the  
12 particular entries at issue reflect documents that are privileged, it shall generate a  
13 privilege log for that entry in compliance with Fed. R. Civ. P. 26(b)(5).

14                   3. If the Responding Party determines upon review that the  
15 particular entries at issue reflect documents that are non-responsive to the  
16 Requesting Party's Requests for Documents, it shall inform the Requesting Party  
17 of this determination in writing.

18                   4. If the Responding Party determines the particular entries at  
19 issue reflect non-privileged and responsive documents, it shall promptly produce  
20 the same to opposing counsel.

21           **D. Other Documents.**

22                   To the extent responsive documents are not identified and logged  
23 using the metadata-generated privilege log, yet are withheld from production  
24 because they contain privileged materials or information, the Responding Party  
25 shall generate a privilege log for each such document in compliance with Fed. R.  
26 Civ. P. 26(b)(5).

1 E. Nonwaiver and Clawback Agreement.

2 1. Non-Waiver. The inadvertent production of material that is  
3 subject to the attorney-client privilege, work product doctrine or other privilege,  
4 protection or immunity from discovery shall not be deemed to be a waiver of the  
5 Responding Party's right to assert a claim of privilege, work product or other  
6 protection or immunity with respect to the produced materials and/or any  
7 materials related to the subject matter thereof.

8 2. Clawback. Any party who inadvertently discloses  
9 documents that are privileged or otherwise immune from discovery shall,  
10 promptly upon discovery of such inadvertent disclosure, so advise the Receiving  
11 Party and request that the documents be returned. The Receiving Party shall  
12 return such inadvertently produced documents, including all copies, within 10  
13 days of receiving such a written request. The party returning such inadvertently  
14 produced documents may thereafter seek re-production of any such documents  
15 pursuant to applicable law.

16 III. Production Formats for Electronic Documents.

17 A. Production Format.

18 Electronic documents and any associated metadata should be  
19 produced in any reasonable form requested by the Requesting Party as agreed to  
20 by the parties after consultation among the parties and with any electronic  
21 discovery vendors retained by the parties.

22 B. Production Rules.

23 1. De-duplication. Parties may de-duplicate globally. Each party  
24 will disclose the methodology it used to de-duplicate (e.g., MD5 Hashing, SHA-  
25 1).

26 2. Near De-duplication. The parties agree that the use of near-de-  
27 duplication protocols can reduce the cost of the review and production of ESI.

28 Parties are not required to use near-de-duplication protocols, but, if they choose

1 to do so, the Responding Party shall disclose to the Receiving Party the near-de-  
2 duplicating protocol intended to be used prior to employing such protocol. The  
3 Receiving Party shall have up to 3 days to object to the Near De-Duplication.  
4 The parties will conference in good faith if the Receiving Party objects to the  
5 Near De-Duplication protocol.

6 3. Presumption. Documents excluded by the de-duplication or  
7 near de-duplication process are deemed non-responsive. The parties shall have  
8 no obligation to search or produce any document excluded by this protocol.

9 **C. Production Sample.**

10 The parties and any electronic discovery vendors they retain shall  
11 consult in good faith in advance of any large scale production to identify and  
12 resolve any format or compatibility concerns in advance of the production.

13 **HARD COPY DOCUMENTS**

14 The parties shall conduct a reasonable search for hard copy  
15 documents consistent with the Federal Rules of Civil Procedure. Responsive and  
16 non-privileged documents should be provided as follows:

17 **A. Format.**

18 The parties agree to produce hard copy documents in an electronic,  
19 text searchable format as agreed to by the parties after consultation among the  
20 parties and with any electronic discovery vendors they retain.

21 **B. Unitizing of documents.**

22 In scanning paper documents, distinct documents should not be  
23 merged into a single record, and single documents should not be split into  
24 multiple records (i.e., paper documents should be logically unitized).

25 **C. Parent-Child Relationships.** Parent-child relationships (the  
26 association between an attachment and its parent document) should be  
27 preserved.

28

1           D.    Objective Coding Fields.

2                   At least the following objective coding fields should be provided for  
3 all hard copy documents:

- 4                   a.    Beginning Bates Number  
5                   b.    Ending Bates Number  
6                   c.    Beginning Attachment Number  
7                   d.    Ending Attachment Number  
8                   e.    Source and Custodian Information

9           E.    Production Sample.

10                   The parties and any electronic discovery vendors they retain shall  
11 consult in good faith in advance of any large scale production to identify and  
12 resolve any format or compatibility concerns in advance of the production.  
13

14                               SCOPE OF AGREEMENT

15                   The parties agree that this Plan shall govern the conduct of ESI and hard  
16 copy document production with respect to the issues addressed in this Plan. The  
17 parties may seek to alter the scope and requirements of this Plan for good cause  
18 by Order of the Court. Nothing in this Plan is intended to waive any privileges  
19  
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28

1 or, except as specifically provided herein, to impose obligations different than  
 2 those contained in the Federal Rules of Civil Procedure.

3  
 4 AGREED this 1st day of October, 2010.

5  
 6 MORRIS PETERSON

7  
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IT IS SO ORDERED.

  
 UNITED STATES MAGISTRATE JUDGE

DATE: OCTOBER 13, 2010

## EXHIBIT A

## Henderson Back-Up Tape Inventory as of August 25, 2010

Tape Number	Last Backup Date
3	9/28/2009
7	11/19/2009
5	12/3/2009
4	1/7/2010
8	1/23/2010
11	2/4/2010
9	2/11/2010
10	2/25/2010
6	3/4/2010
2	4/8/2010
1	5/20/2010
12	6/10/2010
17	6/17/2010
19	6/24/2010
20	7/1/2010
13	7/15/2010
16	7/22/2010
18	7/29/2010
24	8/5/2010